

Christopher Sproul (State Bar No. 126398)  
Stuart Wilcox (State Bar No. 327726)  
ENVIRONMENTAL ADVOCATES  
5135 Anza Street  
San Francisco, California 94121  
Telephone: (415) 533-3376  
Facsimile: (415) 358-5695  
Email: csproul@enviroadvocates.com  
stuart.wilcox5@gmail.com

Attorneys for Plaintiff  
Our Children's Earth Foundation

TODD KIM  
Assistant Attorney General

Mark A. Rigau (CA Bar No. 223610)  
Environment and Natural Resources Division  
450 Golden Gate Avenue, Suite 07-6714  
San Francisco, California 94102  
Tel: 415-744-6487/Fax: 415-552-7005  
Email: mark.rigau@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH FOUNDATION, a  
non-profit corporation,

Plaintiff,

v.

MICHAEL S. REGAN, in his official capacity  
as Administrator of the United States  
Environmental Protection Agency,

Defendant.

Civil Case No. 3:19-cv-7125-WHA

**FOURTH STIPULATION TO MODIFY  
CONSENT DECREE DEADLINE AND  
~~PROPOSED~~ ORDER**

Michael S. Regan is automatically substituted pursuant to Fed. R. Civ. P. 25(d).

Pursuant to Civil L.R. 6-1(b), 6-2, 7-12, and paragraph 11 of the Consent Decree (“Consent Decree”) entered in this case (Dkt. No. 32-1), Plaintiff, Our Children’s Earth Foundation, and defendants, the United States Environmental Protection Agency *et al.* (“EPA”), (together, “the Parties”) stipulate to further continue the deadline for the appropriate EPA official to sign either: (i) a final rule containing revisions to National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) Subpart M under section 112(d)(6) of the Clean Air Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M, extending the deadline from February 1, 2024 to **January 31, 2025**.

On October 14, 2020, the Parties filed a motion to approve the Consent Decree to resolve claims Plaintiff brought against EPA. Dkt. No. 32. The Consent Decree included several deadlines where EPA (1) agreed to either review or revise New Source Performance Standards (“NSPS”) and NESHAPs governing a number of sources by dates certain and (2) agreed to sign either final rules or final determinations not to revise NSPSs and NESHAPs governing a number of sources by dates certain. *See* Consent Decree ¶¶ 2-8. The Court signed the Consent Decree on October 20, 2020. Dkt. No. 33.

Paragraph 11 of the Consent Decree provides that “[t]he deadlines set forth in Paragraphs 2–8 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.” Consent Decree ¶ 11.

Paragraph 8.b of the Consent Decree specifically establishes that “EPA shall sign either: (i) a final rule containing revisions [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M” by no later than December 1, 2022. Consent Decree ¶ 8.b.

Invoking Paragraph 11 of the Consent Decree, on August 18, 2022, the Parties stipulated to continue the December 1, 2022 deadline to June 1, 2023. Dkt. Nos. 41, 42. On April 11, 2023, the Parties stipulated to further continue the June 1, 2023 deadline to February 1, 2024. Dkt. Nos. 43, 44. On

1 November 15, 2023, the Parties stipulated to continue the deadline to December 15, 2024. Dkt. No. 45.  
2 On November 22, 2023, the Court granted an extension until August 31, 2024. Dkt. No. 46. The Parties  
3 now stipulate to continue the deadline to January 31, 2025.

4 The Parties agree that continuing the current August 31, 2024 deadline to January 31, 2025 for  
5 EPA to take final action as noted above is fair, reasonable, and in the public's interest.

6 On December 14, 2022, EPA published a revised risk determination under the Toxic Substances  
7 Control Act ("TSCA") with respect to Perchloroethylene ("PCE") concluding "that PCE, as a whole  
8 chemical substance, presents an unreasonable risk of injury to health when evaluated under its  
9 conditions of use." 87 Fed. Reg. 76481 (Dec. 14, 2022); *see also* 15 U.S.C. § 2605(a) (when EPA  
10 determines that a chemical substance presents an unreasonable risk to health, TSCA requires EPA to  
11 promulgate a rule "to the extent necessary so that [the chemical substance] no longer presents such  
12 risk"). Accordingly, EPA began developing a TSCA regulation with respect to PCE. 87 Fed. Reg. at  
13 76487. Because the forthcoming final TSCA rule regulating PCE will likely impact how EPA may  
14 address a NESHAP amendment for PCE with respect to dry cleaning facilities, the Parties stipulated for  
15 a continuance of the deadline for EPA to take final action with respect to a NESHAP amendment for  
16 PCE with respect to dry cleaners. Dkt. Nos. 43, 44, 45, 46.

17 EPA has made substantial progress with respect to EPA's TSCA PCE rulemaking. On June 16,  
18 2023, EPA published a notice of proposed rulemaking to address the unreasonable risk of injury to  
19 human health presented by PCE. *See* "Perchloroethylene (PCE); Regulation Under the Toxic Substances  
20 Control Act (TSCA)," 88 Fed. Reg. 39652 (June 16, 2023). EPA has now submitted its final TSCA rule  
21 regulating PCE to the Office of Information and Regulatory Affairs (OIRA), Office of Management and  
22 Budget, for interagency review under Executive Order 12866. Under section 6(b)(2) of Executive Order  
23 12866, 90 calendar days are generally allotted for this interagency review period. The PCE rule was  
24 received by OIRA on May 30, 2024. *See* OIRA, "Pending EO 12866 Regulatory Review:  
25 Perchloroethylene (PCE); Regulation under the Toxic Substances Control Act (TSCA)," available at  
26 <https://www.reginfo.gov/public/do/eoDetails?rrid=546662> (last accessed June 10, 2024). Accordingly,

interagency review is expected to be completed around August 28, 2024. Following interagency review, the final rule must be signed and submitted to the Office of the Federal Register for publication. Because the forthcoming final TSCA rule regulating PCE will not be published until the end of summer or early fall 2024, the Parties agree that EPA will need more time to consider what final action it will take with respect to a NESHAP amendment for PCE emissions at dry cleaning facilities in light of the pending final TSCA rule and agree that an extension of the Consent Decree deadline to January 31, 2025 is reasonable.

The Parties have sought three other modifications with respect to deadlines set forth in the Consent Decree and EPA has met every other Consent Decree deadline thus far. *See* Consent Decree ¶¶ 2.a, 2.b, 3.a, 3.b, 4.a, 4.b, 5.a, 6.a, 6.b, 7.a, 7.b, 8.a.

THEREFORE, the Parties stipulate to and request that the Court enter an order continuing the existing deadline of August 31, 2024 for the appropriate EPA official to sign “either: (i) a final rule containing revisions to [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M” to **January 31, 2025**.

Respectfully submitted,

For Plaintiff:

/s/ Stuart Wilcox  
 Stuart Wilcox (State Bar No. 327726)  
 ENVIRONMENTAL ADVOCATES  
 5135 Anza Street  
 San Francisco, California 94121  
 Telephone: (720) 331-0385  
 Fax: (415) 358-5695  
 Email: wilcox@enviroadvocates.com,

Attorney for Plaintiff  
 Our Children’s Earth Foundation

Dated: June 21, 2024  
 (Signed and filed on behalf of Plaintiff with written authorization.)

For Defendant:

Todd Kim  
Assistant Attorney General  
Environment & Natural Resources Division

/s/ Mark A. Rigau  
Mark A. Rigau  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
450 Golden Gate Ave., Suite 07-6714  
San Francisco, California 94102

Dated: June 21, 2024

PURSUANT TO STIPULATION, IT IS SO ORDERED this 27th day of June, 2024



Hon. William Alsup  
United States District Judge